

AGENDA



Thursday, July 26, 2007

Public Works**Item No. 37****RECOMMENDATION FOR COUNCIL ACTION**

Subject: Approve a contract payment to FACILITIES REHABILITATION, INC., Fort Worth, TX (MBE/MH 71.73%) for the Austin Clean Water Program: Govalle 4 - Chicon Street Wastewater Improvements Project in an amount not to exceed \$24,382.80 for a total contract amount of \$227,144.26 necessary for the preservation of public health and safety of the City's residents.

Amount and Source of Funding: Funding is available in the Fiscal Year 2006-2007 Capital Budget of the Austin Water Utility.

Fiscal Note: A fiscal note is attached.

For More Information: Stan Evans, P.E., 479-1636; Gopal Guthikonda, P.E. 703-6637; Laura Bohl 974-7064.

MBE/WBE: This contract was awarded in compliance with Chapter 2-9A of the City Code (Minority-Owned and Women-Owned Business Enterprise Procurement Program). The additional work in question was necessary to preserve public health and safety; therefore, it is exempted under Chapter 252.022 of the Texas Local Government Code and no goals were established for this work. There is 0.00% MBE and 8.76% WBE subcontractor participation to date including this proposed payment.

Boards and Commission Action: Recommended by the Water and Wastewater Commission.

Prior Council Action: Award of Construction Contract: July 27, 2006.

The construction contract for this Project was awarded in late 2006 for the installation of approximately 458 linear feet of new 8-inch wastewater pipelines located along Chicon Street and East 4th Street. The improvements replaced aging and deteriorated facilities to eliminate wastewater overflows that occurred in this area. The Project was part of the Austin Water Utility's Austin Clean Water Program (ACWP), which was developed to respond to the requirements of the Environmental Protection Agency's Administrative Order regarding Sanitary Sewer Overflows. The Notice-to-Proceed was issued November 13, 2006, and work proceeded in the following weeks.

In December 2006, during the course of construction of the ACWP-Govalle 4-Chicon Street Wastewater Improvements Project, the contractor encountered unforeseen conditions in the form of concrete construction and sloughing soils in the roadway bed, which required disposal in accordance with environmental regulations and additional trench safety procedures. Rather than re-bid the Project to provide for the disposal of the unanticipated concrete debris and the implementation of the additional trench safety procedures, which would have left the Project unfinished, the ACWP directed the contractor to complete the work. In completing the work, the contractor incurred additional costs, not part of the original contract. Approval of this payment will provide compensation to the contractors for the unforeseen conditions during construction. The payment is authorized not only as a settlement of a quantum meruit claim, but also under the health and safety exception to competitive bidding requirements, pursuant to Section 252.022(a)(2) of the Texas Local Government Code.

The payment amount of \$24,382.80 is based on costs associated with unknown subsurface conditions, and other associated costs incurred by the contractor. Departmental review of the costs has established that the additional expenses were valid. The payment would result in a total contract amount of \$227,144.26.

Approval of this payment will result in a change order total exceeding 25% of the original contract amount, as permitted through the settlement of a claim on a quantum meruit basis and by the health and safety exception to competitive bidding requirements. The attached Purchasing Affidavit signed by Public Works Assistant Director Joe Ramos confirms that this action was necessary to protect and preserve the public health or safety of the residents of the municipality.